

### REMARKS

Claims 1-4. Claim 5 has been canceled and its limitations have been incorporated in amended independent claim 1. Claims 1-4 and 6-8 are pending in this application.

A Notice of Allowance was mailed on January 10, 2003. However, a review of the allowed claims revealed that claim 2 contained a recitation duplicative to claim 1, namely the step of inserting a smaller inner piece section of graft material behind the bone plate, and inserting two larger outer pieces of graft material on either side of the smaller piece within the resection. Furthermore, it was recognized that claim 1 was better distinguished over the prior art by reciting that the sections were "wedge shaped," rather than specifying that they comprised three pieces, two larger outer pieces and one smaller inner piece.

Accordingly, the present Amendment has been filed concurrently with a Request for Continued Examination in order to delete the duplicative recitations from claim 1, to amend claim 1 to incorporate the "wedge shaped" limitation of claim 5, and to cancel claim 5. As explained in detail below, the Puddu and Betz references of record do not disclose or suggest the subject matter of amended independent claim 1.

Puddu relates to a "system for performing proximal tibial or femoral osteotomies." (Abstract). Puddu teaches that "[T]he system includes a plurality of bone plates of various sizes, and a calibrated wedge tool for opening a resected tibial wedge and determining the size plate to use in the osteotomy." (Abstract). According to Puddu, once the forked wedge tool has been removed, "autologous bone is packed into the defect." (Col. 4, lines 38-39; Figure 9). Thus, "[I]f the gap in the corrected tibia is 7.5 mm or less, autograft bone is taken from tibia" or "[I]f the gap is wider than 7.5 mm, the bone graft is taken from the iliac crest." (Col. 4, lines 39-42; Figure 9). Puddu does not teach or suggest the step of "packing the resection with at least two separate wedge shaped sections of material."

Betz relates to a "method and apparatus for fusionless treatment of spinal deformities." (Title; Abstract). As part of the correction device 10 for the "treatment and correction of spinal deformities, such as scoliosis," Betz teaches "[M]echanical wedges (which) are engaged within the open wedge osteotomies on the concavity of the [spinal] curvature." (Abstract; Col. 3, lines 66-67). Betz notes that "wedge member 43 . . . is configured to be disposed within the osteotomy site to maintain the positioning of the portions of the vertebral body after the osteotomy is opened." (Col. 9, lines 29-32; Figure 3). Betz also teaches that the wedge member 43 of the connection device 40 "includes a wedge body 55 that is preferably fixed to the lower staple 41, such as by welding" and "a flat end face 58 that is aligned with the flat edge 47 of the lower staple 41." (Col. 9, lines 36-38; lines 49-50; Figure 3). Like Puddu, Betz does not disclose or suggest the step of "packing the resection with at least two separate wedge shaped sections of material." (Emphasis added). Specifically, the wedge body 55 of Betz constitutes only one large piece, and not "at least two separate wedge shaped pieces," as in the claimed invention.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

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Respectfully submitted,

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**Version With Markings to Show Changes Made**

1. (Amended) A method of correcting a deformity by performing an osteotomy in a bone at an osteotomy site using a bone plate, the method comprising the steps of:
  - (a) resecting the bone from a first side of the bone to a second side of the bone so as to leave a bony hinge on the second side;
  - (b) opening the resection to a height [depth] at which the deformity is corrected;
  - (c) placing the bone plate in a location such that the bone plate spans the open resection; and
  - (d) packing the resection with at least two separate wedge shaped [prepackaged graft material provided in three] sections of material[], including two larger outer pieces and a smaller inner piece, by inserting the smaller inner piece behind the bone plate, and inserting the two larger outer pieces on either side of the smaller inner piece within the resection].
2. (Amended) The method of claim 1, wherein the step of packing the resection includes the steps of inserting a [the] smaller inner [piece] section of wedge shaped material behind the bone plate, and inserting [the] two larger outer [pieces] sections of wedge shaped material on either side of the smaller wedge shaped section within the resection.
3. (Amended) The method of claim 1, wherein the two [larger outer pieces] wedge shaped sections of material have outer surfaces formed of cortical bone.
4. (Amended) The method of claim 2 [1], wherein the step of inserting the smaller inner section [piece] takes place prior to placing the bone plate.
6. (Amended) The method of claim 1, wherein the [graft] material comprises allograft bone.

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7. (Amended) The method of claim 1, wherein the [graft] material comprises synthetic bone.